

SENATE FINANCE COMMITTEE SUBSTITUTE FOR
SENATE BILL 585

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
INCREASING PENALTIES AND INTEREST FOR LATE FILING OF WAGE
REPORTS AND LATE PAYMENT OF TAXES; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 51-1-12 NMSA 1978 (being Laws 1965,
Chapter 192, Section 1, as amended) is amended to read:

"51-1-12. PENALTY--LATE PAYMENT OF CONTRIBUTIONS.--The
rate of contribution of an employer shall in no case be raised
as a penalty for, or as a result of, the late filing of any
notice, report or payment of contributions required under
Section 51-1-9 NMSA 1978 or any regulations promulgated
thereunder. Effective as to all wages for employment paid on
and after July 1, 1965, quarterly wage and contribution reports
and contribution payments, if not filed on or before the due

.150998.1

underscoring material = new
[bracketed material] = delete

1 date as prescribed by the secretary, shall be subject to the
2 following penalties:

3 A. if the required report for any calendar quarter
4 is not filed within ten days after due date, a penalty of
5 [~~fifty dollars (\$50.00)~~] seventy-five dollars (\$75.00) is to be
6 paid by the employer;

7 B. if the contributions due on such report are not
8 paid in full within ten days after due date, an additional
9 penalty of five percent but not less than twenty-five dollars
10 (\$25.00) is to be paid by the employer on any such
11 contributions remaining unpaid;

12 C. if any payment required to be made by the
13 Unemployment Compensation Law is attempted to be made by check
14 [~~which~~] that is not paid upon presentment, a penalty of twenty-
15 five dollars (\$25.00) shall be paid by the employer; and

16 D. in no case shall any penalty as herein provided
17 or as imposed by this section prior to June 30, 1965 be
18 assessed for any quarter prior to the six completed calendar
19 quarters immediately preceding the quarter in which the
20 employer shall be determined subject to the Unemployment
21 Compensation Law, and in no case shall a penalty for late
22 reporting or late payment of contribution be imposed if, in the
23 opinion of the secretary, an employer's late reporting, late
24 payment of contribution, or both, was occasioned by
25 circumstances beyond the control of the employer, who in good

.150998.1

1 faith exercised reasonable diligence in an effort to comply
2 with the reporting and contribution payment provisions of the
3 Unemployment Compensation Law."

4 Section 2. Section 51-1-34 NMSA 1978 (being Laws 1936
5 (S.S.), Chapter 1, Section 13, as amended) is amended to read:

6 "51-1-34. ADMINISTRATION FUNDS.--

7 A. There is created a special fund to be held in
8 the custody of the state treasurer and known as the
9 "unemployment compensation administration fund".

10 (1) All money paid into the fund is available
11 to the secretary. All money in the fund shall be expended
12 solely for the purposes and in the amount found necessary by
13 the secretary of labor of the United States [~~of America~~] for
14 the administration of the Unemployment Compensation Law.
15 Except as provided in Subsection B of this section, the fund
16 shall consist of money appropriated by the state, and all money
17 received from the federal government or any of its agencies,
18 including the department of labor of the United States [~~of~~
19 ~~America~~], the railroad retirement board or from any other
20 source for such purpose. Money received from the railroad
21 retirement board as compensation for services or facilities
22 supplied to the board shall be paid into the fund. All money
23 in the fund shall be deposited, administered and disbursed in
24 accordance with the Unemployment Compensation Law and
25 regulations, except that money in the fund shall not be

.150998.1

1 commingled with other state funds but shall be maintained in a
2 separate account on the books of the depository. Any balance
3 in the fund shall not lapse at any time but shall be
4 continuously available for expenditure consistent with the
5 Unemployment Compensation Law. Such money is subject to the
6 general laws applicable to the deposit of public money in New
7 Mexico, and collateral pledged shall be maintained in a
8 separate custody account.

9 (2) If Section 303(a)(5) of Title 3 of the
10 Social Security Act and Section 3304(a)(4) of the Internal
11 Revenue Code are amended to permit a state agency to use, in
12 financing administrative expenditures incurred in carrying out
13 its employment security functions, some part of the money
14 collected, or to be collected, under the Unemployment
15 Compensation Law, in partial or complete substitution for
16 grants under Title 3, then the Unemployment Compensation Law
17 shall be modified by proclamation and by general rules in the
18 manner and to the extent and within the limits necessary to
19 permit such use under the Unemployment Compensation Law, and
20 the modification is effective on the same date as the use is
21 permissible under federal amendments.

22 B. There is created a special fund to be held in
23 the custody of the state treasurer and known as the "employment
24 security department fund".

25 (1) The fund is separate from the unemployment

1 compensation administration fund.

2 (2) All money paid into the employment
3 security department fund may be expended only pursuant to an
4 appropriation by the legislature or specific provision of law.
5 The department shall submit its annual budget for expenditures
6 from the fund in accordance with the rules and regulations
7 established by the department of finance and administration
8 governing the submission of budgets by state agencies. All
9 balances in the fund at the end of the fiscal year [~~which~~] that
10 have not been appropriated for expenditure shall remain in the
11 fund and be invested by the state treasurer until appropriated
12 by the legislature. The money in the fund, except for refunds
13 of interest and penalties erroneously collected, and except for
14 fiscal-year balances, shall be expended solely for the purposes
15 and in the amount found necessary for the payment of the costs
16 of administration not chargeable against federal grants or
17 other funds received for the unemployment compensation
18 administration fund. Nothing in this section shall prevent the
19 unencumbered money of the fund from being used as a revolving
20 fund to cover necessary and proper expenditures for which
21 federal funds have been duly requested but not yet received,
22 subject to the charging of such expenditures against such funds
23 when received. Money shall not be expended or made available
24 for expenditure in any manner [~~which~~] that would permit its
25 substitution for, or cause a corresponding reduction in,

.150998.1

1 federal funds [~~which~~] that would be available, in the absence
2 of such money, to finance expenditures for the administration
3 of the Unemployment Compensation Law. The fund shall consist
4 of all interest collected on delinquent contributions and all
5 penalties provided by the Unemployment Compensation Law and all
6 other money received for the fund from any other source. All
7 money in the fund shall be deposited, administered and
8 disbursed in accordance with this section, except that money in
9 the fund shall not be commingled with other state funds but
10 shall be maintained in a separate account on the books of the
11 depository and is subject to the general laws applicable to the
12 deposit of public money in New Mexico, and collateral pledged
13 shall be maintained in a separate custody account.

14 (3) All revenue from the employment security
15 department fund shall be expended exclusively for employment
16 services administration by the department.

17 C. The state treasurer is liable on his official
18 bond for the faithful performance of his duties in connection
19 with the funds created by Subsections A and B of this section,
20 in addition to the liability upon all other bonds."

21 Section 3. Section 51-1-36 NMSA 1978 (being Laws 1936
22 (S.S.), Chapter 1, Section 14, as amended) is amended to read:

23 "51-1-36. COLLECTION OF CONTRIBUTIONS.--

24 A. Contributions unpaid on the date on which they
25 are due and payable shall bear interest at the annual

.150998.1

1 percentage rate of [~~one percent per month~~] fifteen percent
2 compounded quarterly from and after such date until payment is
3 received by the division. Interest collected pursuant to this
4 subsection shall be paid into the employment security
5 department fund.

6 B. If, after due notice, any employer defaults in
7 any payment of contributions or interest thereon, the amount
8 due shall be collected by civil action in the name of the
9 division, and the employer adjudged in default shall pay the
10 costs of such action. Civil actions brought under this section
11 to collect contributions or interest thereon from an employer
12 shall be heard by the court at the earliest possible date and
13 shall be entitled to preference on the calendar of the court
14 over all other civil actions except petitions for judicial
15 review under [~~this act~~] the Unemployment Compensation Law and
16 [~~worker's~~] workers' compensation cases arising under Sections
17 52-1-1 through 52-2-13 NMSA 1978 or in the discretion of the
18 secretary, if any contribution or any portion thereof or any
19 interest or penalty imposed by the Unemployment Compensation
20 Law is not paid within thirty days after the same becomes due,
21 the secretary shall, after due notice and opportunity to be
22 heard in accordance with regulations, issue a warrant under its
23 official seal, directed to the sheriff of any county of the
24 state commanding him to levy upon and sell the real and
25 personal property of the person owning the same, found within

.150998.1

1 his county, of the payment of the amount due and an added
2 amount of ten percent of the contribution in addition to any
3 other penalties imposed and costs of executing the warrant, and
4 to return such warrant to the secretary and pay to him the
5 money collected by virtue thereof, by the time to be therein
6 specified, not more than thirty days from the date of the
7 warrant. In the event the division does not know the amount of
8 contribution due, and the employer from whom the same is due
9 refuses or fails to make reports showing what he or it claims
10 for the amount of contributions [~~which~~] that it believes to be
11 due, and the division files the warrant for the estimated
12 amount, mailing notice to the employer stating that it is
13 estimating the amount of contribution due and giving the
14 estimated amount in the notice, the warrant and estimated
15 amount shown therein shall have the same effect as any other
16 warrant issued under this subsection. If the employer does not
17 make a showing to the satisfaction of the secretary that the
18 estimated amount is incorrect within thirty days after the
19 warrant is filed with the county clerk, then the estimated
20 amount shown in the warrant shall be and become the amount of
21 the contribution due for the period stated in the warrant. The
22 sheriff to whom any warrant, issued under this section, is
23 directed shall, within five days after receipt of the same,
24 file with the county clerk of his county a copy thereof, for
25 which the clerk shall make no charge, and thereupon the county

.150998.1

1 clerk shall record the same upon his records and the day when
2 such copy is filed. Thereupon the amount of the warrant so
3 filed and entered shall become a lien upon all property, real
4 and personal, of the person against whom it is issued,
5 including choses in action, except negotiable instruments not
6 past due; provided, however, that such lien shall be inferior
7 to all other valid liens, encumbrances, mortgages, judgments
8 and assessments [~~which~~] that are filed or placed of record
9 prior to the filing of such warrant. The sheriff or a
10 representative of the division thereupon shall levy upon any
11 property of the taxpayer, including negotiable instruments, and
12 the property so levied on shall be sold in all respects with
13 the like effect, and in the same manner as is prescribed by law
14 with respect to executions against property upon judgments of a
15 court of record, and the remedies of garnishment shall apply.
16 Whenever any property or right to property upon which levy has
17 been made is not sufficient to satisfy the claim for which levy
18 is made, the sheriff or a representative of the division may
19 thereafter, and as often as may be necessary, proceed to levy
20 in like manner upon any other property or rights to property
21 subject to levy of the person against whom the claim exists,
22 until the amount due from him is fully paid. The sheriff shall
23 be entitled to the general fees for his services in executing
24 the warrant as now allowed by law for like services, to be
25 collected in the same manner as now provided by law for like

.150998.1

1 services. All costs of executing warrants including mileage of
2 the sheriff serving and executing the same and all other costs
3 in connection with the levy, including advertising or
4 publication costs upon the sale of any property levied upon,
5 shall be collected by the department from the employer from
6 whom contribution is due.

7 C. In the event of any distribution of an
8 employer's assets pursuant to an order of any court under the
9 laws of this state, including any receivership, assignment for
10 benefit of creditors, adjudicated insolvency, composition or
11 similar proceeding, contributions then or thereafter due shall
12 be paid in full prior to all other claims except taxes and
13 claims for remuneration of not more than two hundred fifty
14 dollars (\$250) to each claimant, earned within six months of
15 the commencement of the proceeding. In the event of an
16 employer's adjudication in bankruptcy, judicially confirmed
17 extension proposal, or composition, under the Federal
18 Bankruptcy Code 11 U.S.C. Sec. 101 et seq., contributions then
19 or thereafter due shall be entitled to such priority as is
20 provided in the Federal Bankruptcy Code U.S.C. Title 11, Sec.
21 507.

22 D. If not later than four years after the date on
23 which any contributions or interest thereon are paid an
24 employing unit that has paid such contributions or interest
25 thereon [~~shall make~~] makes application for an adjustment

.150998.1

1 thereof in connection with subsequent contribution payments, or
2 for a refund thereof because such adjustment cannot be made,
3 and the secretary [~~shall determine~~] determines that such
4 contributions or interest or any portion thereof was
5 erroneously collected, the secretary shall allow such employing
6 unit to make an adjustment thereof, without interest, in
7 connection with subsequent contribution payments by him, or if
8 such adjustment cannot be made, the secretary shall refund the
9 amount, without interest, from the fund to which the amount was
10 deposited. For like cause and within the same period,
11 adjustment or refund may be so made on the secretary's own
12 initiative.

13 E. Any person, group of individuals, partnership or
14 employing unit, that acquires the organization, trade or
15 business or substantially all the assets thereof from an
16 employer shall notify the division in writing by registered
17 mail not later than five days prior to the acquisition. Unless
18 such notice is given, such acquisition shall be void as against
19 the division, if, at the time of the acquisition, any
20 contributions are due and unpaid by the previous employer, and
21 the secretary shall have the right to proceed against such
22 employer either in personam or in rem and the assets so
23 acquired shall be subject to attachment for such debt."

24 Section 4. EFFECTIVE DATE.--The effective date of the
25 provisions of this act is July 4, 2004.

.150998.1